

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC JASON HANNING,

Defendant-Appellant.

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UNPUBLISHED

March 11, 2014

No. 312734

Hillsdale Circuit Court

LC No. 12-362718-FH

Before: MARKEY, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Defendant appeals by leave granted his conviction for manufacturing methamphetamine, MCL 333.7401(2)(b)(i). We vacate defendant's sentence and remand for resentencing.

At sentencing, the trial court scored offense variable (OV) 1, MCL 777.31, at 20 points and scored OV 2, MCL 777.32, at 15 points. For OV 1 and OV 2 to be scored, the defendant must use or possess the harmful substance as a weapon. *People v Lutz*, 495 Mich \_\_; 836 NW2d 680 (2013), citing *People v Ball*, 297 Mich App 121; 823 NW2d 150 (2012). There was no evidence that defendant used or possessed methamphetamine as a weapon in this case; consequently, the trial court erred in scoring OVs 1 and 2. They should have been scored at zero. Because accurate scoring of the guidelines here produces a lower guidelines range, defendant is entitled to resentencing. *People v Jackson*, 487 Mich 783, 792; 790 NW2d 340 (2010).

We vacate defendant's sentence and remand for resentencing. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Kurtis T. Wilder

/s/ Christopher M. Murray